

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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GUY MOLINARI, et al.,

Plaintiffs,

- against -

MICHAEL R. BLOOMBERG, et al.,

Defendants.

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ORDER

CV 08-4539 (ERK) (JO)

JAMES ORENSTEIN, Magistrate Judge:

In response to my order of November 12, 2008, the parties have unanimously consented to have the Clerk re-assign this case to a district judge selected at random, and I therefore respectfully direct the Clerk to do so.

Although the plaintiffs consent to the re-assignment, they continue to take the position that it would be consistent with the Local Civil Rules of this court to treat this case as being "related" to two prior cases – *Guy Molinari, et al. v. William Powers, et al.*, Docket No. 99-CV-8447 (ERK) (ASC); and *Noach Dear, et al. v. Bd. of Elections, et al.*, Docket No. 03-CV-3739 (ERK) (JMA) – notwithstanding the questions I raised about such relation in my earlier order. *See* Docket Entry ("DE") 4 (letter dated Nov. 12, 2008). In taking that position, the plaintiffs rely on the same version of the related-case rule that I did – a version that I have learned has been superseded. To ensure a clear record, and to provide guidance for litigants in this district in future cases, I provide the revised language of the rule, as currently in effect.

50.3.1 Related Civil Cases

- (a) "Related" Civil Case Defined. A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial

resources is likely to result from assigning both cases to the same judge and magistrate judge.

- (b) Civil Cases Not Deemed "Related". A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties.
- (c) Civil Cases Presumptively Not "Related": Unless Both Cases Are Still Pending. Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court.

Loc. Civ. R. 50.3.1(a)-(c).¹

Of relevance here, the amended rule now makes clear that an identity of legal issues or of parties is not necessarily a sufficient basis for deeming two cases to be related. Loc. Civ. R. 50.3.1(b). In addition, the amended rule presumes that a newly-filed case is not "related" to any closed case. Loc. Civ. R. 50.3.1(c). As a result, it seems clear that there is no basis for deeming the instant case to be considered "related" to either the earlier *Molinari* case or the *Dear* case, both of which were closed years ago. Finally, the amended rule explicitly sets forth a procedure by which a party may apply to have the court determine that a given case is related to some other case; it is no longer permissible for a party unilaterally to declare that the cases are related and thereby render the non-random judicial assignment a *fait accompli*. See Loc. Civ. R. 50.3.1(d).

¹ The current version of the rule was made available for public comment from September 22, 2008 through October 26, 2008. It was published on the court's Internet web site on November 12, 2008 – after the instant case was filed, and the same day that I issued my order to show cause. Under the circumstances, there is no need to analyze which version of the rule controls. Either way, there is at least a question as to the propriety of assigning the case to Judge Korman as a related case, and that question has in any event been resolved by the parties' consent to re-assign the case by random selection.

For the reasons set forth above, and with the consent of the parties, I respectfully direct the Clerk to assign this case to a district judge by random selection.

SO ORDERED.

Dated: Brooklyn, New York
November 13, 2008

/s/ James Orenstein
JAMES ORENSTEIN
U.S. Magistrate Judge